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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#16
Appeal Brief
12-19-03
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In the application of

KIRT E. WHITESIDE

Serial No. 09/780,603

Filed October 29, 2002

For MECHANIC'S CREEPER

Group Art Unit 3618

Jeffrey J. Restifo, Examiner

CERTIFICATE OF MAILING

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APPELLANT'S BRIEF PURSUANT TO 37 C.F.R. 1.192

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Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is an appeal to the Board of Patent Appeals from the final rejection in the Office Action mailed July 10, 2003. The Notice of Appeal was filed on October 6, 2003. The present appeal is of claims 1-13 and 16-19 of the subject application. This Appeal Brief is submitted herewith in triplicate, and check in the amount of $165.00 to cover the required fee is enclosed. In the event that the enclosed fee is not sufficient, the Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 18-0987.

I. REAL PARTY IN INTEREST

The owner of the present patent application is Whiteside Mfg. Co. The assignment was recorded in the Assignment Division of the United States Patent and Trademark Office on March 10, 2000, and was recorded in the records of the PTO at Reel/Frame 010664/0459. Whiteside Mfg. Co. is incorporated under the laws of the State of Ohio, U.S.A., and has a principal place of business at 309 Hayes Street, Delaware, Ohio 43015. A copy of the Assignment document and the Notice of Recordation of the Assignment document are enclosed herewith.

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II. RELATED APPEALS AND INTERFERENCES

An appeal of a final rejection of the parent application of the present application, U.S. Serial No. 09/523,469, was filed on October 24, 2002. The appeal was assigned Appeal No. 2003-1649, and all issues were ultimately resolved in favor of the Applicant.

III. STATUS OF CLAIMS

The present application was filed on October 29, 2002, as a continuation application of U.S. Serial No. 09/780,603, which was filed on February 12, 2001 as a continuation-in-part of U.S. Serial No. 09/523,469, which was filed on March 10, 2000. The application was originally filed with nineteen (19) claims. Claims 14 and 15 were canceled, and claims 1-13 and 16-19 stand finally rejected. The rejected claims, in their amended form where applicable, are presented for this appeal in attached Appendix A.

IV. STATUS OF AMENDMENTS

An amendment has been filed subsequent to final rejection to correct an objection of the Examiner, and to provide a terminal disclaimer to overcome a provisional rejection based on non-statutory double patenting grounds.

V. SUMMARY OF THE INVENTION

The instant application is directed to a mechanic's creeper encompassing at least four (4) improvements. First, the instant invention alternately relates to a mechanic's creeper wherein the width of contact between the radial surface of the wheel body and a work surface is from about 50 to about 75 percent of the maximum width of the wheel body, and, more specifically, the wheel body extends in a hemispherical or a semielliptical cross-section from the hub. Second, the instant invention relates to a mechanic's creeper where the area of contact between radial surface of the wheel body and the working surface is limited, and the wheel body has a hardness allowing the shape of the wheel body to remain substantially unchanged during normal use. Third, the instant invention relates to a mechanic's creeper wherein the caster assemblies can be fully positioned under and within the vertical profile of the

side rails, and, more specifically, a mechanic's creeper wherein the caster assemblies have bearing races lying wholly within the vertical profiles of the side rails. Finally, the instant invention relates to a mechanic's creeper wherein side rails have top and bottom surfaces, and the top surface can taper toward the bottom surface to provide decreased cross-sections for the side rails.

Typically, mechanic's creepers have been designed with side rails of rectangular or square cross section. However, a problem exists with the use of rectangular or square cross-sectioned side rails. These side rails have sharp edges that lie adjacent to the padding held between the side rails. Because the padding provided between the side rails is not normally as wide as the shoulders of the user, the sharp edges can be extremely uncomfortable.

To overcome the problems associated with rectangular or square cross-sectioned side rails, side rails of circular cross section have been provided on prior art mechanic's creepers. Unlike rectangular or square cross-sectioned side rails, the circular cross-sectioned side rails serve to enhance comfort. However, a further problem exists with the use of circular cross-sectioned side rails: there is limited contact between the caster assemblies and these side rails.

For example, the circular surface of the circular cross-sectioned side rails only contacts the caster assemblies along their downward facing radial edges. Therefore, no matter how secure the mode of connection, the downward facing radial edges of the side rails tend to "rock" on the mounting surfaces of the caster assemblies. Over time, such rocking action breaks down the connection, and causes the caster assemblies to "wiggle" on the circular cross-sectioned side rails.

To overcome the problems associated with circular cross-sectioned side rails, flat or rectangular cross-sectioned wheels have typically been provided on prior art mechanic's creepers. The shape of the flat or rectangular cross-sectioned wheels serve to maximize the contact area between the wheels and the working surface, and, thereby minimize the above-discussed rocking action.

However, another problem is created by the use of the flat or rectangular cross-sectioned wheels. That problem relates to friction which is generated between the flat or rectangular cross-sectioned wheels and the

working surface. The friction opposes both the revolution of the flat or rectangular cross-sectioned wheels and the rotation of such wheels about a vertical axis. For example, the friction increases the required turning radius of the mechanic's creeper by preventing the flat or rectangular cross-sectioned wheels from rotating quickly about the above-described vertical axis. Consequently, the flat or rectangular cross-sectioned wheels prevent prior art mechanic's creepers from turning sharply.

The effects of the above-discussed friction are even more readily apparent when the caster assemblies are subject to the weight of the user. To reduce the above of friction generated by the wheels of the caster assemblies, the present invention contemplates providing wheels with a shape which limits contact with the working surface. When prior art caster assemblies have been provided with wheels having an initial shape (i.e. rounded edges) that should limit contact with the working surface, these wheels are formed of materials that substantially deform during use, and the contact area ultimately resembles that of the above-described flat or rectangular cross-sectioned wheels. Consequently, when these deformable rounded-edge wheels are used with typical mechanic's creepers, the above-discussed problems remain. That is, like mechanic's creepers using flat or rectangular cross-sectioned wheels, the deformable rounded-edge wheels, when used with typical mechanic's creepers, deform to resemble the flat or rectangular cross-sectioned wheels, and serve to maximize the contact area with the working surface. Such contact maximizes the amount of friction between the deformable rounded-edge wheels and the working surface.

The present invention relates to an improved mechanic's creeper that solves the above-discussed problems associated with typical mechanic's creepers. The improved mechanic's creeper is generally indicated by the numeral 10/100, and includes padding 12 and, optionally, a headrest 13 positioned between opposed side rails 14/114 on a plurality of crossbars 15.

Unlike typical mechanic's creepers, the side rails 14/114 of the present invention can be generally tapered to eliminate the discomfort associated with typical mechanic's creepers. The side rails 14/114 are hollow and include a generally horizontal bottom surface 16 and opposed top surface

17. The bottom surface 16 lies substantially parallel to the working surface, and the top surface 17 can be angled in relation to bottom surface 16 to provide a tapered cross section.

The outer ends of surfaces 16 and 17 can be connected by an outer arcuate surface 18, and the inner ends of surfaces 16, 17 can be connected by an inner arcuate surface 19. To provide the above-discussed tapered cross section, the radius of curvature of arcuate surface 18 is greater than that of arcuate surface 19. Preferably, the side rails 14/114 "taper" in a direction toward the padding 12, thereby "cradling" a user to minimize discomfort, while simultaneously providing a flat, horizontal bottom surface for mounting a plurality of caster assemblies.

Various caster assemblies 20 and 120 can be used to support the side rails 14/114, and provide for mobility of the creeper 10. The caster assemblies 20 and 120 are connected to the horizontal bottom surfaces 16 of side rails 14/114. The caster assemblies 20 each include a wheel assembly 22 that rotates about a vertical axis on rolling elements 24, 26. Besides the rolling elements 24, 26, the wheel assembly 22 includes top and bottom bearing brackets 28, 30 having respectively a top race 32 and a bottom race 34, a horn 36, an axle 38, and a wheel 140 which, as indicated in the specification, can be substituted for wheel 40 in all embodiments. The rolling elements 24, 26 are retained within the top and bottom bearing brackets 28, 30. More specifically, the rolling elements 24, 26 are respectively maintained between the horn 36, and the top race 32 of the top bearing bracket 28 and the bottom race 34 of the bottom bearing bracket 30. The wheel 140 is carried between the sides of the horn 36 by the axle 38, and the axle 38 allows the wheel 140 to revolve on a horizontal axis.

A kingpin 42 is used to hold together various elements of the caster assemblies 20 (i.e. top and bottom bearing brackets 28, 30 and horn 36). The kingpin extends through apertures 44, 46, and 48 in top bearing bracket 28, bottom bearing bracket 30, and horn 36, respectively. The kingpin 42 securely retains horn 36 between rolling elements 24, 26.

To permit the rotation of horn 36 on rolling elements 24, 26 (about the vertical axis), the aperture 48 in horn 36 has a larger diameter than kingpin 42.

The larger diameter provides a gap between kingpin 42 and horn 36 to facilitate the rotation of wheel assembly 22. Furthermore, to ensure that the gap provided by aperture 48 is not easily compromised by a shifting of horn 36, and to further facilitate the rotation of wheel assembly 22, horn 36 is provided with top and bottom raceways 50, 52, respectively, which receive top and bottom rolling elements 24, 26. Together, the rotation of the horn 36 (and the rest of the wheel assembly 22) about the vertical axis, and the revolution of the wheel 140 on the horizontal axis provides for the movement of the creeper 10 in any direction on the working surface.

Somewhat like the caster assemblies 20, the alternative caster assemblies 120 each can include a wheel assembly 122. The wheel assembly 122 rotates about a vertical axis on rolling elements 124 that are retained within the race of a bearing bracket 128. The rolling elements 124 are maintained between the bearing bracket 128 and a horn 136 of the wheel assembly 122 by a kingpin (or bolt and nut) 130. As such, the kingpin 130 is used to "clamp" various elements of the caster assemblies 120 together, thereby allowing the horn 136 (and the rest of the wheel assembly 122) to rotate about the vertical axis.

The wheel assembly 122 also includes a wheel 140. The wheel 140 is carried between the sides of the horn 136 by an axle 138, and the axle 138 allows the wheel 140 to revolve on a horizontal axis. Together, the rotation of the horn 136 (and the rest of the wheel assembly 122) about the vertical axis, and the revolution of the wheel 140 on the horizontal axis provides for the movement of the creeper 10 in any direction on the working surface.

In addition, side rails 14/114 of the present invention can have vertical profiles that are sufficiently wide to fully contact and cover the caster assemblies 20 and 120. To illustrate, the side rails 14/114 can be configured to cover the top bearing bracket 28 and top race 32 and the bottom bearing bracket 30 and the bottom race 34 of caster assemblies 20. As discussed hereinabove, the bottom surfaces 16 of the side rails 14/114 are substantially parallel to the working surface. However, to facilitate a secure connection with the caster assemblies 20 and 120, the bottom surfaces 16 are at least as wide as the diameter of the top bearing bracket 28 and/or bearing bracket 128.

Consequently, the caster assemblies 20 and 120 can be positioned wholly within the vertical profile of the side rails 14/114, and, therefore, be in substantial contact with the bottom surfaces 16. The substantial contact between the top bearing bracket 28 and/or bearing bracket 128, and the bottom surfaces 16 prevents the connection therebetween from breaking down.

The wheel 140 used in both caster assemblies 20 and 120 includes a wheel body 142 disposed around a hub 144. The hub 144 has an axial bore 146 therethrough for receiving the above-discussed axles 38, 138. The hub 144 includes an outer rim 148, an inner rim 150 and radial supports 152 disposed therebetween. The inner rim 150 is distanced from the axial bore 146 by a bearing 154.

The wheel body 142 has a rounded radial surface at numeral 160 which reduces the contact area between the wheel 140 and the working surface. The rounded radial surface 160 is provided by forming wheel body 142 with transitions 162 extending from side walls 164 of hub 144 to the apex of the radial surface 160. In their most basic design, the transitions 162 extend to form a wheel body 142 of having a hemispherical or semielliptical cross section. In such a design, the area of contact between the radial surface 160 and the floor extends along a width well short of the maximum width of the wheel body 142, generally defined by the distance between the side walls 164. However, as discussed hereinbelow, the area of contact between the radial surface 160 and the floor necessarily depends on the hardness of the material from which the wheel body 142 is formed.

The wheel body 142 can be formed of materials including polymeric materials such as polypropylene, monoprene, polyurethane, thermoplastic rubber, polyolefin, and the like. The structural integrity of the wheel body 142 is designed to be maintained over a substantial period of use, and, therefore, should have a high hardness and be wear resistant. For example, the hardness generally ranges from about 65 to about 85 on the Shore durometer hardness type D scale. Use of such materials allows the wheel body 142 to maintain its above-discussed hemispherical or semielliptical cross section when in contact with the working surface.

Therefore, when the mechanic's creeper 10 is moved along the working surface, the frictional forces opposing the revolution of the wheels 140 are reduced. Furthermore, because the contact area between the wheel 140 and working surface is reduced, the frictional forces opposing the rotation of the wheel assembly 122 are also reduced. In fact, due to the hardness of the materials used to form the wheel body 142, the width of the contact between the radial surface 160 and the working surface is limited from about 50 to about 75 percent of the maximum width of the wheel body 142. Therefore, because the shape of the wheel body 142 limits the contact area, and, therefore, reduces the amount of friction generated by the wheel bodies 142 on the working surface, the required turning radius of the mechanic's creeper can be decreased. Consequently, the mechanic's creeper 10 can turn with less force exerted by a user.

As a result of the above discussion, it is apparent that the instant invention solves the problems inherent with typical mechanic's creepers. A mechanic's creeper is provided wherein the width of contact between the radial surface of the wheel body and a work surface is from about 50 to about 75 percent of the maximum width of the wheel body, and, more specifically, the wheel body can extend in a hemispherical or a semielliptical cross section. Furthermore, a mechanic's creeper is provided where the area of contact between the radial surface of the wheel body and the working surface is limited, and the wheel body has a hardness allowing the shape of the wheel body to remain substantially unchanged during normal use. Additionally, a mechanic's creeper is provided wherein the caster assemblies can be fully positioned under and within the vertical profile of the side rails, and, more specifically, a mechanic's creeper is provided wherein the caster assemblies have bearing races lying wholly within the vertical profiles of the side rails. Finally, a mechanic's creeper is provided wherein side rails have top and bottom surfaces, and the top surface can taper toward the bottom surface to provide decreased cross-sections for the side rails.

VI. ISSUES

The first issue presented in this Appeal is whether claims 1-2, 7-8, 13 and 16-19 are properly rejected under 35 U.S.C. § 103 as being obvious in light of Berry U.S. Patent No. 5,863,053 (hereinafter "Berry") in view of Bonzer et al. U.S. Patent No. 4,559,669 (hereinafter "Bonzer et al."). The second issue presented in this Appeal is whether claims 3 and 9 are properly rejected under 35 U.S.C. § 103 as being obvious in light of Berry and Bonzer et al. further in view of Hook U.S. Patent No. 5,692,809 (hereinafter "Hook"). The third issue presented in this Appeal is whether claims 4 and 10 are properly rejected under 35 U.S.C. § 103 as being obvious in light of Berry, Bonzer et al. and Hook further in view of Doyle et al. U.S. Patent No. 4,707,880 (hereinafter "Doyle"). The fourth issue presented in this Appeal is whether claims 5 and 10 are properly rejected under 35 U.S.C. § 103 as being obvious in light of Berry and Bonzer et al. further in view of Doyle. The final issue presented in this Appeal is whether claims 6 and 12 are properly rejected under 35 U.S.C. § 103 as being obvious in light of Berry, Bonzer et al. and Doyle et al. further in view of Block U.S. Patent No. 4,034,434 (hereinafter "Block").

VII. GROUPING OF CLAIMS

It is Appellant's contention that neither of the independent claims 1 or 7 stand or fall together. Therefore, each of the independent claims will be treated separately.

VIII. ARGUMENT

As discussed hereinabove, the Examiner has rejected independent claim 1 as obvious based on Berry U.S. Patent No. 5,863,053 in view of Bonzer U.S. Patent No. 4,559,669. According to the Examiner with respect to claim 1, Berry discloses the following:

> Berry discloses a creeper 10 comprising opposed side rails 18, 22, a pad 34 between said side rails, and a plurality of caster assemblies 28a-b, 30 attached to a planar bottom surface of said side rails.

The Examiner indicates that Berry does not disclose the caster wheels having a radial surface in which only 50 to 75 percent of the width of the caster wheel contacts the support surface. Nevertheless, the Examiner contends that Bonzer et al. does disclose a caster assembly (1) being rotatable about a vertical axis (20) and having a wheel (18) with a hub (45) with an axle bore (46), an inner rim (I), an outer rim (O), radial supports (R), and a curved outer surface (69) allowing only 50 percent of the radial surface to make contact with the ground as shown in Figs. 1-4.

The Examiner believes it would have been obvious to one having ordinary skill in the art to provide the creeper of Berry with the caster assemblies of Bonzer et al. "to allow the creeper to turn with less force exerted by a user due to less friction between the wheel and support surface." However, at Column 5, Lines 42-44, Bonzer et al. teaches that the relatively soft elastomeric material forming wheel body (69) of the wheel deforms readily upon contact with any irregularity, to effectively cushion such contact. In fact, according to Column 5, Lines 24-25, the hardness of the material forming wheel body (69) ranges from 50 to 70 on the Shore durometer hardness type A scale. As such, the material forming wheel body (69) is inherently designed to deform. Despite the clear teaching, the Examiner indicates that "the shape of the Bonzer et wheel body would not 'substantially' change when viewed as a whole, otherwise it would not roll, so the hardness limitation is inherently met by the caster of the Bonzer et al. reference."

The Applicant disagrees with the Examiner's contentions regarding claim 1. Moreover, the Applicant maintains that the Examiner has not established a *prima facie* case of obviousness. "To support that conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to be obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Here, unlike claim 1, the combination of Berry and Bonzer et al. does not teach wheels having a wheel body with a radial surface wherein the width of the contact between the radial surface and a working surface is from about 50 to 75 percent

of the maximum wheel body width, and with a hardness such that when in normal use the shape of the wheel body remains substantially unchanged.

The apparatus resulting from the combination of Berry and Bonzer et al. would include the casters disclosed in Bonzer et al. attached to the side rails disclosed in Berry. But, Bonzer et al. teaches that the caster wheels should be substantially deformable to maintain contact with the floor surface, with the hardness of the material forming the wheel body (69) ranging from 50 to 70 on the Shore durometer hardness type A scale (Column 5, Lines 24-25). Therefore, although the wheel body (69) is shown in Figs. 1-4 of Bonzer et al. with an initial shape, the wheel body (69) when used on the above-discussed apparatus would easily deform under a user's weight. That is, when a user is positioned on the apparatus resulting from the combination of Berry and Bonzer et al., the weight of the user will cause the wheel body (69) to deform.

Such deformation will increase the contact area between the wheel body (69) and the working surface. In fact, the shape of the wheel body (69) in contact with the floor would resemble that of the above-discussed flat or rectangular cross-sectioned wheels. The amount of friction generated by the wheel body (69) under a user's weight would oppose both the revolution of the wheels, and the rotation of such wheels about the vertical axis.

As discussed hereinabove, the present invention was designed to avoid such friction. For example, as claimed in claim 1, the wheel bodies 142 have a hardness such that when in normal use the shape of the wheel bodies 142 remains substantially unchanged, and the width of contact between the radial surface 160 and the working surface is from about 50 to 75 percent of the maximum width of the wheel body 142. Therefore, unlike the mechanic's creeper 10 of the instant invention, the apparatus resulting from the combination of Berry and Bonzer et al. has a large turning radius because the friction generated by the wheel body (69) opposes both the revolution of the wheels, and the rotation of such wheels about the vertical axis. Consequently, because Bonzer et al. teaches and requires the use of deformable wheels, substituting substantially non-deformable wheels like that in claim 1 is not suggested by the teachings of Bonzer et al. or a combination of Berry and Bonzer et al. Consequently, claim 1 is not obvious in light of these references.

Independent claim 7 was also rejected as being obvious in light of the combination of Berry and Bonzer et al. According to the Examiner with respect to claim 7, "Berry discloses a creeper 10 comprising side rails 18, 22, a pad 34, a plurality of casters 28a-b, 30 with wheels." The Examiner indicates that Berry does not disclose a wheel assembly having a bearing bracket or top race, or having a semielliptical cross section. Nevertheless, the Examiner contends that Bonzer et al. discloses a caster assembly (10) having a semi-elliptical wheel body (69), a wheel hub (80) with an axle bore (46), an inner rim (I), an outer rim (O), radial supports (R), a top bearing bracket (26) with a bottom race for bottom rolling elements (25), a kingpin (21), and rivet nuts (15) as shown in Figs. 1-4, where "said top bearing bracket could be placed within the vertical profile of the side rails of the Berry creeper."

The Examiner believes it would have been obvious to one having ordinary skill in the art to provide the creeper of Berry with the caster assemblies of Bonzer et al. "to allow the casters to rotate vertically to decrease the turning radius of the creeper." However, as discussed hereinabove, the hardness of the material forming wheel body (69) ranges from 50 to 70 on the Shore durometer hardness type A scale (Column 5, Lines 24-25). As such, the relatively soft elastomeric material forming wheel body (69) is inherently designed and intended by Bonzer et al. to deform. Nevertheless, the Examiner indicates "that the shape of the Bonzer et al. wheel body would not 'substantially' change when viewed as a whole, otherwise it would not roll, so the hardness limitation is inherently met by the caster of the Bonzer et al. reference."

The Applicant disagrees with the Examiner's contentions regarding claim 7. Moreover, the Applicant maintains that the Examiner has not established a *prima facie* case of obviousness. Again quoting the *Clapp* case, "to support that conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to be obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Furthermore, the range of sources available does

not diminish the requirement for actual evidence. A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." See *In re Lee*, 61 USPQ.2d 1430, 1433-35 (Fed. Cir. 2002). See also *In re Dembiczak*, 50 USPQ.2d 1614, 1617 (Fed. Cir. 1999). Unlike claim 7, the combination of Berry and Bonzer et al. does not teach a wheel having a wheel body extending in hemispherical or semi-elliptical cross-section from a hub, and having a hardness such that when in normal use the shape of the wheel body remains substantially unchanged. In fact, the Examiner lacks evidence supporting the contention that the hardness limitation is inherently met by the caster of Bonzer et al.

The Apparatus resulting from the combination of Berry and Bonzer et al. would have the caster disclosed in Bonzer et al. attached to the side rails disclosed in Berry. Berry teaches that the caster wheels should be substantially deformable to maintain contact with the working surface. To that end, the hardness of the material forming the wheel body (69) ranges from 50 to 70 on the Shore durometer hardness type A scale (Column 5, Line 24-25). As such, when a user is positioned on the apparatus resulting from Berry and Bonzer et al., the wheel body (69) will deform. The hardness of the wheel body (69) will not allow the shape of the wheel body (69) to remain substantially unchanged during normal use.

As discussed hereinabove, the present invention was designed to provide a wheel body 142 having a shape that remains substantially unchanged during normal use to avoid the friction discussed in the arguments associated with claim 1. However, unlike the mechanic's creeper 10 of the present invention as claimed in claim 7, the apparatus resulting from the combination of Berry and Bonzer et al. teaches and requires the use of deformable wheels. As such, the apparatus resulting from the combination has a large turning radius. Therefore, substituting substantially non-deformable wheels like that in claimed in claim 7 is not suggested by the teachings of Berry or Bonzer et al. or a combination of Berry and Bonzer et al. Consequently, claim 7 is not obvious in light of these references.

Claim 7 is also distinguishable from the combination of Berry and Bonzer et al. because claim 7 requires the top surface and bottom surface of

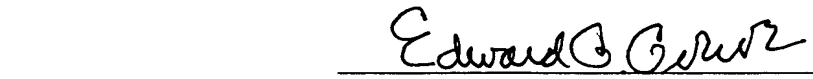
the side rails to taper towards one another to define a decreased cross section for the side rails. However, the Examiner indicates that "with respect to the limitations in claim 7 concerning the shape of the side rail cross section, the shape of the side rail cross section is not patentable unless it produces an unexpected result." The Applicant again disagrees with this contention of the Examiner. The cross-sectional shape of the side rails does produce an unexpected result. The cross-sectional shape of the side rails provides a planar bottom surface for attachment of the side rails associated with only prior art rectangular or square cross-sectioned side rails, while at the same time providing the comfort associated with only prior art circular cross-sectioned side rails. Heretofore, such a result has not been available in typical mechanic's creepers.

Because the independent claims 1 and 7 are patentably distinct from the applied prior art, the dependent claims depending therefrom are also believed to be allowable, rendering the other issues moot. Nevertheless, at least some of the dependant claims also include patentably distinct subject matter worthy of a brief discussion herein. For example, dependent claims 6 and 12 are directed to the wheel bodies having a hardness of from about 65 to 85 on the Shore durometer hardness type D scale, and were rejected under 35 U.S.C. § 103 as being obvious based on the combination of four references, Berry, Bonzer et al., Doyle et al., and Block. According to the Examiner, "it would be obvious to one having ordinary skill in the art at the time the invention was to have designed the wheel, as taught by Berry, Bonzer et al., and Doyle et al., with a hardness of 65/75 Shore D Durometer" as taught by Block. But, as discussed above, Bonzer et al. teaches away from such a combination. Because the material forming wheel body (69) of Bonzer et al. ranges from 50 to 70 on the Shore durometer hardness type A, Bonzer et al. teaches the need for a soft wheel. To arrive at the Examiner's result, the teachings of Bonzer et al. must therefore be contradicted. Consequently, claims 6 and 12 are not obvious in light of the combination of Berry, Bonzer et al, Doyle et al, and Block, and are independently patentable.

IX. CONCLUSION

Berry and the combination of Berry and Bonzer et al. only result in a mechanic's creeper with the same problems that the present invention was designed to solve. As a result, claims 1-13 and 16-19, are patentable over this prior art, necessitating a reversal of the Examiner by this Board.

Respectfully submitted,



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